

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 13

DECEMBER 12, 1979

No. 50

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 79-299)

Bonds

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds) Customs form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: November 21, 1979.

Name of principal and surety	Date term commences	Date of approval	Filed with area director of Customs; amount
US Air Inc., National Airport, Washington, D.C., The Actna Casualty and Surety Co. The foregoing principal has been designated as a carrier of bonded merchandise.	Oct. 26, 1979	Oct. 26, 1979	Washington, D.C.; \$300,000
Allegheny Airlines, Inc., Washington National Airport, Washington, D.C., Safeco Insurance Co. of America D 10/29/79	Dec. 14, 1978	Jan. 17, 1979	Cleveland, OH; \$300,000

HARVEY B. FOX
(For Donald W. Lewis, Acting
Director, Office of Regulations and Rulings).

(T.D. 79-300)

Tariff Classification—Blue Jeans

Notice that certain cotton denim trousers known as blue jeans are reclassified as
ornamented wearing apparel

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Decision concerning an American manufacturer's petition.

SUMMARY: The Customs Service has reviewed a petition filed by an American manufacturer of wearing apparel requesting that certain cotton denim trousers known as blue jeans, currently classifiable as nonornamented wearing apparel under item 380.39, Tariff Schedules of the United States (TSUS), or under item 382.33, TSUS, be reclassified under the provision for other ornamented wearing apparel of cotton in item 380.00, TSUS, if for use by men or boys, or in item 382.00, TSUS, if for use by either sex or by women, girls, or infants. The petitioner claims that any of 13 distinct features (enumerated below) appearing on blue jeans should result in classification of such blue jeans as ornamented wearing apparel. The Customs Service has reviewed the record and determined that 3 of the 13 features claimed by the petitioner to be ornamental will result in the classification of blue jeans possessing any of these three features under the provisions for ornamented wearing apparel. The remaining 10 features claimed to be ornamental will continue to be considered as nonornamental for tariff classification purposes.

DATES: Jan. 12, 1980

FOR FURTHER INFORMATION CONTACT: Philip Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5865.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 3, 1978, a notice was published in the Federal Register (43 F.R. 34236) indicating that the Customs Service had received a petition from an American manufacturer of wearing apparel, filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting that certain cotton denim trousers known as blue jeans, currently classifiable as nonornamented wearing apparel under item 380.39, Tariff Schedules of the United States (TSUS), or under item 382.33, TSUS, be reclassified under the provision for other ornamented wearing apparel of cotton in item 380.00, TSUS, if for

use by men or boys, or in item 382.00, TSUS, if for use by either sex or by women, girls, or infants. Comments concerning the petition were to have been received on or before September 5, 1978. However, notices extending the period of time for the submission of comments to November 3, 1978, were published in the Federal Register on September 6, 1978 (43 F.R. 39624), and on October 5, 1978 (43 F.R. 46108).

The petitioner contends that, pursuant to headnote 3, schedule 3, TSUS, which purports to define the term, "ornamented," blue jeans possessing any of the following features should be classified as ornamented for tariff purposes: (1) Inserted leather yokes; (2) fabric used for pocket openings when pockets have been inserted into the leather portions of a garment; (3) double-layered patch pockets formed by two pieces of irregularly shaped fabric which are stitched together, and then stitched to a third piece of fabric which acts as a backing; (4) a braided fabric strip stitched to the edge of a patch pocket opening; (5) stitching made necessary by precutting when the pre-cutting has no apparent functional purpose except to make the stitching essential to completing the article; (6) separate belt loops sewn to form an "X"; (7) leather piping inserted along the edge of a pocket opening; (8) basket weave inserts made of leather strips inserted in patch pockets; (9) metal rivets; (10) stitching which holds together a patch pocket made from two pieces of fabric; (11) leather strips used to finish the opening of stand pockets; (12) patch pockets with openings which are formed from the material of the pocket itself, instead of by failing to stitch the top of the pocket to the body of the garment; and (13) leather piping inserted in the seams where two pieces of fabric are joined.

Headnote 3, schedule 3, TSUS, reads as follows:

For the purposes of the tariff schedules—

(a) The term "ornamented," as used with reference to textile fabrics and other articles of textile materials, means fabrics and other articles of textile materials which are ornamented with—

(i) fibers, filaments (including tinsel wire and lame), yarns, or cordage, any of the foregoing introduced as needlework or otherwise, including—

(A) embroidery, and pile or tufting, whether wholly cut, partly cut, or not cut, and

(B) other types of ornamentation, but not including functional stitching or one row of straight hemstitching adjoining a hem;

(ii) burnt-out lace;

(iii) lace, netting, braid, fringe, edging, tucking, or trimming, or textile fabric;

(iv) applique and replique work, beads, bugles, spangles, bullions, or ornaments; or

(v) any combination of the foregoing types of methods of ornamentation;

(b) ornamentation of the types or methods covered hereby consists of ornamenting work done to a preexisting textile fabric, whether the ornamentation was applied to such fabric—

(i) when it was in the piece,

(ii) after it has been made or cut to a size for particular furnishings, wearing apparel, or other article, or

(iii) after it had actually been incorporated into another article,

and if such textile fabric remains visible, at least in significant part, after ornamentation: *Provided*, That lace, netting, braid, fringe, edging, tucking, trimming, or ornament shall not be required to have had a separate existence from the fabric or other article on which it appears in order to constitute ornamentation for the purposes of this headnote; and

(c) applique work, beads, bugles, spangles, bullions, and other forms of nontextile ornamentation applied to a textile fabric or other article of textile materials shall be disregarded in determining the component material of chief value of such fabric or other article.

The American manufacturer's petition claims that each of the 13 features enumerated above is primarily decorative rather than functional and ornaments the blue jeans upon which it appears. The petition also claims that the features in question are listed in headnote 3, schedule 3, TSUS. Furthermore, the petition alleges that many of the features are necessitated by constructing the blue jeans from pieces of fabric in a manner different from the usual construction.

DISCUSSION OF COMMENTS

The Customs Service has received 62 submissions concerning the instant American manufacturer's petition; 38 submissions supported the petition and 24 were opposed.

On the substantive issue of ornamentation, the submissions in opposition to the petition contend that the features in question are primarily functional and utilitarian, often forming integral parts of the blue jeans without which the blue jeans would be incomplete. Regarding the petitioner's claim that many of the subject features are necessitated by unusual construction, opponents of the petition argue that Customs should not classify wearing apparel based upon a mere opinion how a garment should be constructed. Where two different but integral pieces of fabric are joined together giving a decorative appearance, opponents of the petition contend that to hold such construction ornamental would be to hold ornamented all garments constructed from two different types of material. Finally, opponents of the petition argue that the subject features are not the kind of embellishments listed in headnote 3, schedule 3, TSUS.

DETERMINATION

A feature, however ornamental, which constitutes a material and necessary portion of a garment, and without which the garment would be incomplete, does not constitute ornamentation. *Protest of B. Altman & Co.*, 34 Treas. Dec. 206, T.D. 37559 (1918); *United States v. Saks & Co.*, 13 Ct. Cust. Appl. 367, T.D. 41259 (1925); *Paramount Bead Corp v. United States*, 19 C.C.P.A. 385, T.D. 45522 (1932). This principle was reaffirmed in *Blairmoor Knitwear Corp. v. United States*, 60 Cust. Ct. 388, C.D. 3396 (1968). In view of these decisions, it is our position that various features, including (1) the inserted leather yokes and (5) the stitching made necessary by precutting, do not constitute ornamentation for tariff purposes on the ground that they form integral parts of the blue jeans without which the blue jeans would be incomplete.

It is also well settled that a feature which is primarily functional and incidentally decorative in nature is nonornamental. Thus, a distinction must be drawn between that which finishes, joins, serves a utilitarian purpose, and only incidentally ornaments, and that which primarily adorns, embellishes, or ornaments. *Blairmoor supra*. Based on this distinction, it is our position that certain features, including (2) the fabric used for pocket openings when pockets have been inserted into the leather portions of a garment, (3) double-layered patch pockets, (9) metal rivets, (10) stitching which holds together a patch pocket made from two pieces of fabric, and (12) patch pockets with openings which are formed from the material of the pocket itself, are primarily functional and do not constitute ornamentation.

Furthermore, it is our decision that (7) leather piping inserted along the edge of a pocket opening, (11) leather strips used to finish the opening of stand pockets, and (13) leather piping inserted in the seams where two pieces of fabric are joined, are not ornamentation inasmuch as they do not constitute any of the types of ornamentation listed in headnote 3, schedule 3, TSUS.

We conclude, however, that (4) the braided fabric strip stitched to the edge of a patch pocket opening constitutes ornamentation inasmuch as it is primarily decorative, only incidentally functional, and is described in headnote 3, schedule 3, TSUS, as braid, edging, trimming, and textile fabric. Furthermore, (6) separate belt loops sewn to form an "X" constitute ornamentation inasmuch as they are primarily decorative rather than functional. Each of the belt loops forming the "X" is strong enough to serve by itself.

Therefore, the additional loop is merely incidentally functional. Finally, it is clear that (8) the basket weave inserts made of leather strips and inserted into holes cut in patch pockets serve primarily for

the visual effect they produce. The inserts, which are assembled from strips of leather into a fabric-like patch, are ornaments as listed in headnote 3, schedule 3, TSUS. Therefore, the basket weave inserts constitute ornamentation for tariff purposes.

Blue jeans possessing any of the features enumerated in (4), (6), and (8), above are ornamented for tariff purposes and classifiable under the provision for other ornamented wearing apparel of cotton in item 380.00, TSUS, if for use by men or boys, or in item 382.00, TSUS, if for use by either sex or by women, girls, or infants.

This decision will be effective with respect to merchandise entered or withdrawn from warehouse for consumption on or after 30 days from the date of publication of this notice in the CUSTOMS BULLETIN.

Dated: November 26, 1979.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

[Published in the Federal Register, Nov. 30, 1979 (44 F.R. 69066)]

(T.D. 79-301)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruziero, Peoples' Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical), and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and other concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruziero:

November 5, 1979-----	\$0.0321
November 6, 1979-----	Holiday
November 7-9, 1979-----	.0321
November 12, 1979-----	Holiday
November 13-16, 1979-----	.0321
November 19, 1979-----	.0321
November 20-21, 1979-----	.0312
November 22, 1979-----	Holiday
November 23, 1979-----	.0312

Peoples Republic of China yuan:

November 5, 1979-----	\$0.654065
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November 6, 1979-----	Holiday
November 7-8, 1979-----	. 654065
November 9, 1979-----	. 651466
November 12, 1979-----	Holiday
November 13-14, 1979-----	. 651466
November 15-16, 1979-----	. 654065
November 19-21, 1979-----	. 654707
November 22, 1979-----	Holiday
November 23, 1979-----	. 654707

Hong Kong dollar:

November 5, 1979-----	\$0. 198649
November 6, 1979-----	Holiday
November 7, 1979-----	. 198906
November 8, 1979-----	. 199005
November 9, 1979-----	. 199124
November 12, 1979-----	Holiday
November 13, 1979-----	. 199402
November 14, 1979-----	. 199442
November 15, 1979-----	. 199243
November 16, 1979-----	. 199104
November 19, 1979-----	. 199243
November 20, 1979-----	. 199521
November 21, 1979-----	. 199601
November 22, 1979-----	Holiday
November 23, 1979-----	0. 199900

Iran rial:

November 5, 1979-----	\$0. 0143
November 6, 1979-----	Holiday
November 7, 1979-----	. 0143
November 8, 1979-----	. 0143
November 9-23, 1979-----	Not available

Philippines peso:

November 5, 1979-----	\$0. 1350
November 6, 1979-----	Holiday
November 7-9, 1979-----	. 1350
November 12, 1979-----	Holiday
November 13-16, 1979-----	. 1350
November 19-21, 1979-----	. 1350
November 22, 1979-----	Holiday
November 23, 1979-----	. 1350

Singapore dollar:

November 5, 1979-----	\$0. 457980
November 6, 1979-----	Holiday
November 7, 1979-----	. 457875
November 8, 1979-----	. 457561
November 9, 1979-----	. 455685
November 12, 1979-----	Holiday
November 13, 1979-----	. 456100
November 14, 1979-----	. 457561
November 15, 1979-----	. 457352
November 16, 1979-----	. 458295
November 19, 1979-----	. 458926
November 20, 1979-----	. 457038
November 21, 1979-----	. 456204
November 22, 1979-----	Holiday
November 23, 1979-----	. 457143

Thailand baht (tical):

November 5, 1979-----	\$0. 0495
November 6, 1979-----	Holiday
November 7-9, 1979-----	. 0495
November 12, 1979-----	Holiday
November 13-16, 1979-----	. 0495
November 19-21, 1979-----	. 0495
November 22, 1979-----	Holiday
November 23, 1979-----	. 0495

Venezuela bolivar:

November 5, 1979-----	\$0. 2328
November 6, 1979-----	Holiday
November 7-9, 1979-----	. 2328
November 12, 1979-----	Holiday
November 13-16, 1979-----	. 2328
November 19-21, 1979-----	. 2328
November 22, 1979-----	Holiday
November 23, 1979-----	. 2329

(LIQ-3-TRODE)

Date: November 28, 1979.

MYLES J. WYNN
 (For G. Scott Shreve, Acting
 Director, Duty Assessment Division).

(T.D. 79-302)

Foreign Currencies—Variances From Quarterly Rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 79-264 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversions shall be at the following rates:

Japan yen:

November 5, 1979	\$0.004218
November 6, 1979	Holiday
November 7, 1979	.004163
November 8, 1979	.004144
November 9, 1979	.004106
November 12, 1979	Holiday
November 13, 1979	.004055
November 14, 1979	.004109
November 15, 1979	.004045
November 16, 1979	.004057
November 19, 1979	.004077
November 20, 1979	.004062
November 21, 1979	.004031
November 22, 1979	Holiday
November 23, 1979	.004016

Switzerland franc:

November 5, 1979	\$0.607349
November 6, 1979	Holiday
November 7, 1979	.611995
November 8, 1979	.607718
November 9, 1979	.604961
November 12, 1979	Holiday
November 13, 1979	\$0.602773
November 14, 1979	.607903
November 15, 1979	.603136
November 16, 1979	.606796
November 19, 1979	.609942

November 20, 1979-----	. 608273
November 21, 1979-----	. 609385
November 22, 1979-----	Holiday
November 23, 1979-----	. 605144

United Kingdom pound:

November 5, 1979-----	\$2. 0690
(LIQ-3-TRODE)	

Date: November 28, 1979.

MYLES J. WYNN
(For G. Scott Shreve, Acting
Director, Duty Assessment Division),

ERRATUM

In CUSTOMS BULLETIN No. 46, dated Nov. 14, 1979, C.D.
4825 should be deleted.

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis

James L. Watson
Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Custom Rules Decision

(C.R.D. 79-14)

BRANIFF AIRWAYS, INC., PLAINTIFF v. THE UNITED STATES, DEFENDANT

Memorandum Opinion Accompanying Order

Court No. 75-3-00646

[Order denying judgment on pleadings and stipulation of facts.]

(Dated November 14, 1979)

Arnold & Porter (Paul S. Berger and Kenneth A. Letzler on the brief), for the plaintiff.

Alice Daniel, Acting Assistant Attorney General, Joseph I. Liebman, Attorney in Charge, Field Office for Customs Litigation (James A. Resti on the brief), for the defendant.

BoE, Judge: Pursuant to a stipulation entered into between the respective parties, the above-entitled action is submitted to the court for judgment on the pleadings and on an accompanying statement of facts contained therein.

From the foregoing, the following facts have been established: The merchandise in question consists of 13 BAC 1-11 jet passenger aircraft manufactured by the British Aircraft Corp. (hereafter referred to as BAC) in the United Kingdom, imported therefrom by the plaintiff into the United States and entered at the Port of Newark, N.J., between March 1965 and January 1966; included in the dutiable value of each aircraft, set forth with particularity in plaintiff's complaint, is the sum of \$57,115 attributable to the cost of warranties specifically so allocated in the purchase price contained in the contract entered into between the plaintiff and British Aircraft Corp. (exhibit A); the warranty provisions contained in the purchase contract specified that defects which, if discovered in the subject merchandise within a defined period of time, would be corrected in the manner as therein provided;¹ the geographical situs where repairs might be made included the United States; the warranty provisions contained in the purchase and sale contract relating to the imported merchandise was a commercial warranty, as distinguished from a consumer warranty, and was negotiated at arm's length between the parties possessing relatively equal bargaining power and economic strength; the provisions relating to the merchandise in question differed in various respects from warranty provisions contained in purchase and sale contracts relating to similar aircraft between BAC and other purchasers in the United States.

The parties are in agreement that the appraisement of the subject merchandise properly was made on the basis of constructed value pursuant to section 402(d), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956 (19 U.S.C. 1401a) providing:

(d) Constructed value

For the purposes of this section, the constructed value of imported merchandise shall be the sum of—

(1) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise undergoing appraisement which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

¹ Exhibit A, Art. 6, secs. 6.01, 6.02, and 6.03.

- (2) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise undergoing appraisement which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for shipment to the United States; and
- (3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise undergoing appraisement in condition, packed ready for shipment to the United States.

The sole question, therefore, presented for determination herein is whether the sum attributable to the cost of the warranties provided for in the purchase and sale agreement negotiated by the plaintiff and BAC should have been included in the appraised constructed value of the merchandise in question.

In the determination of the constructed value, it appears that the parties are in agreement that the cost of the warranties in question are not properly included under either subsection (1) of the aforequoted statute providing for the "cost of materials" or of the "fabrication or other processing of any kind employed in producing such or similar merchandise" or under subsection (3) thereof providing for the cost of "containers and coverings" or "other expenses incidental to placing the merchandise in question packed ready for shipment to the United States." A disagreement does exist, however, as to whether the cost of such warranties should be included under subsection (2) of the statute providing for "general expenses and profit" reflected in the sale of the merchandise in question.

It is the opinion of the court, therefore, that neither the pleadings nor the accompanying stipulation of facts submitted are sufficient in themselves to permit the adjudication of the issue which the parties seek in this proceeding.

In the determination of the general expenses to be included in the computation of the constructed value of the imported merchandise, the statute provides the manner in which the same shall be ascertained. The provisions thereof delineate precisely the character of the factual evidence required and deemed material in such a determination. Subsection (2) of the statute provides in pertinent part that the "general expenses and profit" included in the constructed value of merchandise must be equal to that usually reflected in sales of goods of the same general class or kind undergoing appraisement which *are made by producers in the country of exportation*. The stipulation entered into and submitted by the parties in this action does not indicate whether the cost of warranties of the nature in issue herein is usually reflected in the sales of merchandise for export of the same general class or kind by *other producers* in the country of exportation, but

rather is solely limited to the practices of one producer, BAC, in its export sale agreements with the plaintiff and other U.S. purchasers. Nor has a showing been made that such other producers of merchandise of the same class or kind do not exist or that after diligent inquiry any information relating to the "general expenses and profit" of other producers has proved to be unobtainable. *N. M. Albert Co., Inc., et al. v. United States*, 62 Cust. Ct. 1029, A.R.D. 254 (1969); *John V. Carr & Son, Inc. v. United States*, 52 CCPA 62, C.A.D. 860 (1965); and *Hong Kong Fashions, Ltd. v. United States*, 67 Cust. Ct. 488, R.D. 11751 (1971). Thus, an evaluation of the "general expenses and profit" in connection with the production of the merchandise at issue cannot be made pursuant to the statutory mandate.

In view, therefore, of the existence of a genuine issue of material facts remaining in connection with the determination of the appraised constructed value of the subject imported merchandise, judgment on the pleadings and on the accompanying stipulation of facts filed herein cannot be granted.

Now therefore, it is hereby

ORDERED, ADJUDGED and DECREED that judgment on the pleadings and on the stipulated facts submitted by the parties hereto be and is hereby denied.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, November 19, 1979.

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

CUSTOMS COURT

15

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
PTO/200	Watson, J., November 13, 1979	S. S. Kresge Co.	77-7-01161	Item 380.60 20% per lb. + 15%	Item 735.20 10%	The Newman Importing Co., Inc. v. U.S. (C.D. 4648)	Longview (Portland, Ore.) Tents
PTO/201	Watson, J., November 13, 1979	Roller of America	77-12-04635	Item 708.28 20%	Item 722.34 10%	Agreed statement of facts	New York Penta prints; parts of cameras
PTO/202	Malez, J., November 13, 1979	APF Electronics Inc.	77-7-01149- 8, etc.	Item 735.20 10%	Item 734.20 5.5%	APF Electronics Inc. v. U.S. (C.D. 4784)	Chicago T.V. games

CUSTOMS COURT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
F79/208	Maletz, J. November 13, 1979	Granada Electronics	79-3-00417	Item 735.20 10%	Item 734.20 5.6%	APF Electronics Inc. v. U.S. (C.D. 4784)	New York T.V. game machines
F79/204	Maletz, J. November 13, 1979	Lafayette Radio Electronics Corp.	79-12-02276	Item 733.20 10%	Item 734.20 5.5%	APF Electronics Inc. v. U.S. (C.D. 4784)	Los Angeles T.V. game machines
F79/205	Maletz, J. November 13, 1979	Nadel & Sons Toy Corp.	79-1-00066	Item 737.90 17.5%	Item 734.20 5.6%	Mego Corp. v. U.S. (C.A.D. 1137)	New York "Plastic slot machine game"
F79/206	Watson, J. November 14, 1979	Roller of America, Inc.	79-0-01694	Item 708.25 20%	Item 722.34 10%	Agreed statement of facts New York Prints; parts of cameras	

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisal Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R70227	Rao, J. November 14, 1970	Bus and Truck Supply Co.	70-0-01985	Export value	Appraised values, less 10% (excluding form 10% deduction the value of any Michelin tires included in ap- praised values), less value of components of U.S. origin allowed on liquidation	Agreed facts	Houston Inter-city passenger bus
R70228	Rao, J. November 14, 1970	Yoshida Interna- tional, Inc.	73-7-01884	Constructed value	Equal to involved unit prices plus 8.4%, net, packed	Agreed facts	Los Angeles: New York Zippers and/or slider parts classified under item 745.70, 745.72 or 745.74
R70229	Ford, J. November 14, 1970	International Stand- ard Electric Corp.	R653708, etc.	United States value	F.o.b. unit prices plus 50%	Agreed facts	New York Electron receiving tribes

CUSTOMS COURT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R70/280	Ford, J., November 14, 1979	Westinghouse Electric Corp.	R67/14454	United States value	F.o.b. unit prices plus 50%	Agreed facts	New York Electron receiving tubes
R70/281	Watson, J., November 14, 1979	YKK Zipper Inc.	72-6-01876	Constructed value	Equal to invoiced unit prices plus 8.5%, net, packed	Agreed facts	Chicago; Los Angeles Zippers and/or zipper parts classified under item 745.70, 745.72 or 745.74
R70/282	Newman, J., November 14, 1979	YKK Zipper (USA), Inc., etc.	72-11-02291	Constructed value (if exported from Japan prior to 2/1/72) United States value (if exported on or after 2/1/72)	Equal to invoiced unit prices plus 8.5%, net, packed Equal to invoiced unit prices, net, packed	Agreed facts	Dallas (Houston); Los Angeles Zippers and/or zipper parts classified under item 745.70, 745.72 or 745.74
R70/283	Newman, J., November 14, 1979	YKK Zipper (Illinois), Inc.	72-12-02810	Constructed value	Equal to invoiced unit prices plus 8.5%, net, packed	Agreed facts	Chicago; New York Zippers and/or zipper parts classified under item 745.70, 745.72 or 745.74
R70/284	Newman, J., November 14, 1979	YKK Zipper (Calif.), Inc.	72-12-02817	Constructed value (if exported from Japan prior to 2/1/72) United States value (if exported on or after 2/1/72)	Equal to invoiced unit prices plus 8.5%, net, packed Equal to invoiced unit prices, net, packed	Agreed facts	Los Angeles; Seattle Zippers and/or zipper parts classified under item 745.70, 745.72 or 745.74

R7925	Rao, J. November 15, 1979	Bus and Truck Supply Co.,	76-02143, 640.	Export value	Appraised values less 10% (excluding from 10% deduction the value of any Michelin tires included in app- praised values), less value of components of U.S. origin allowed on liquidation	Agreed facts	Statement of New Orleans Inter-city passenger buses

Rehearing Motion Filed

NOVEMBER 16, 1979

Border Brokerage Co., Inc. v. United States, Consolidated Court No. R65/10840.—STEEL REINFORCING BARS.—C.D. 4825. Motion by plaintiff.

Judgments of the U.S. Customs Court in Appealed Cases

NOVEMBER 5, 1979

Appeal 79-9.—United States v. Exxon Corporation, Chevron Oil Co.—PETROLEUM DERIVATIVE KNOWN AS MOTOR ALKYLATE—MOTOR FUEL—NAPHTHA—TSUS.—C.D. 4772 affirmed September 13, 1979 (C.A.D. 1233).

NOVEMBER 8, 1979

Appeal 79-4.—Pistorino & Co., Inc. v. United States.—ACUPUNCTURE DOLLS—MODELS—CHARTS—TSUS.—C.D. 4763 affirmed June 14, 1979 (C.A.D. 1227), rehearing denied July 26, 1979.

Appeal to U.S. Court of Customs and Patent Appeals

Appeal 80-5.—*Pasco Terminals, Inc. v. United States.*—CRUDE OR ELEMENTAL SULPHUR—DUMPING DUTIES—AFFIRMATIVE INJURY DETERMINATION—ANTIDUMPING ACT OF 1921—SUMMARY JUDGMENT. Appeal from C.D. 4823.

In this case, Pasco Terminals, Inc. (plaintiff-appellant), a wholly owned subsidiary of Azufrera Panamericana, S.A., Mexican producer and exporter of the four entries of crude or elemental sulphur involved herein, brought an action in the Customs Court to recover the dumping duties, which it (Pasco) paid, that were assessed on the merchandise pursuant to the Antidumping Act of 1921 (19 U.S.C. 160 *et seq.* (1970)).

The facts are as follows: On February 5, 1972, the Office of the Secretary of the Treasury published a determination that elemental sulphur from Mexico was being or was likely to be sold at less than fair value (LTFV); the U.S. Tariff Commission (now the U.S. International Trade Commission) instituted investigation No. AA1921-92 to determine whether an industry in the United States was being or was likely to be injured, or was prevented from being established, by reason of the importation of such merchandise into the United States; notice of the investigation and hearing was published and a public hearing was held March 28-30, 1972; the Commission unanimously determined that an industry in the United States was being injured by reason of imports from Mexico of sulphur sold or likely to be sold at LTFV; the Commission notified the Secretary of the Treasury of its determination of injury which was published in the Federal Register on May 10, 1972; on June 28, 1972, the Assistant Secretary of the Treasury published a finding of dumping with respect to sulphur exported from Mexico (the sulphur was mined by the Frasch hotwater mining process); the dumping duties were assessed and paid.

Plaintiff claimed: (1) That the Tariff Commission proceeding was procedurally defective in that (a) the Commission in making the affirmative injury determination did not proceed in compliance with its own rules of practice and procedure, and that (b) the Commission violated fundamental due process rights in the conduct of its hearing;

(2) that the Commission determination of injury was arbitrary, capricious, an abuse of discretion, and not according to law for the reasons that (a) the Commission in its determination failed to discuss (i) Duval's (Duval Corp., one of the U.S. Frasch sulphur producers during the relevant period) role as a new entrant in the Tampa sulphur market as the likely reason for the price depression in Tampa, (ii) why the announced price increase in early 1972 did not hold at a time when Azufrera had withdrawn from the Tampa market, (iii) the basis upon which the Commission found that LTFV sales had injured or were likely to injure the domestic industry in the east coast market, and (iv) why injury, if any, was not de minimis, and that (b) the Commission committed an error of law because it allegedly equated LTFV sales and offers with injury.

The Customs Court rejected plaintiff's claims. Defendant's motion for summary judgment was granted; plaintiff's cross-motion for summary judgment was denied; the action was dismissed. (Since the court found that no due process violation occurred, it determined it was unnecessary to reach the question, raised by defendant-appellee, that plaintiff had no standing to challenge the alleged due process rights of a third party, i.e., Azufrera.)

Plaintiff-appellant (Pasco) states the issues presented on appeal as follows: (1) Whether the U.S. Tariff Commission, in conducting its injury investigation, failed to follow its own rules of practice and procedure, and thereby abused its discretion, with the consequence that the injury determination cannot stand; (2) whether the U.S. Tariff Commission, in conducting its injury investigation, abused its discretion and/or denied due process of law in denying cross-examination of crucial evidence, with the consequence that the injury determination cannot stand; (3) whether the U.S. Tariff Commission, in its injury determination, failed to consider critical evidence on the operation of the Tampa sulphur market, thereby rendering an affirmative injury determination that was arbitrary, with the consequence that the injury determination cannot stand.

As to the first issue, Pasco contends that the Customs Court erred as a matter of law in concluding that the exhibit in question (confidential exhibit 2) was entitled to confidential treatment under the Tariff Commission's rules of practice and procedure; as to the second issue, Pasco contends that the Customs Court erred in holding that the Tariff Commission did not violate due process of law or otherwise abuse its discretion when the Tariff Commission, having acknowledged a right of cross-examination at its hearing, declined to permit the exercise of that right on the crucial issue of responsibility for price depression; as to the third issue, Pasco contends that the Customs Court erred in concluding that the Tariff Commission's decision was

not arbitrary and capricious when the Tariff Commission failed to address market facts, especially the entry of a major new domestic competitor, that showed there could be no reasonable basis for an affirmative injury finding. Pasco requests that the judgment below be reversed, and that the court remand to the court below with directions to enter judgment for Pasco.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of
CERTAIN ROTATABLE PHOTOGRAPH
AND CARD DISPLAY UNITS, AND
COMPONENTS THEREOF

Investigation No. 337-TA-74

Notice of Investigation

Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 15, 1979, and amended on November 5, 1979, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Roto-Photo Co., Inc., 5620 North Western Avenue, Chicago, Ill. 60659, and Aaron H. Shneider, 9211 Drake Avenue, Skokie, Ill. 60076, alleging that unfair methods of competition and unfair acts exist in the importation into the United States of certain rotatable display units, or in their sale, by reason of the alleged unfair acts, specified in the complaint, as follows: (1) Infringement by such rotatable display devices of (a) the claim of U.S. Letters Patent 3,218,743, (b) the claim of U.S. Letters Patent 3,791,059, (c) U.S. Trademark Registration No. 838,394, and (d) the common law trademark on Roto-Photo; and (2) restraint of and the tendency to monopolize commerce of rotatable display units.

The complaint, as amended (complaint), alleges that the effect or tendency of the unfair methods of competition and unfair acts is to substantially injure an industry, efficiently and economically operated, in the United States.

Complainants request that after a full investigation has been conducted, exclusion of the imports in question, or other relief as authorized, be ordered by the Commission.

Having considered the complaint, the Commission on November 8, 1979, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), an investigation be instituted to determine whether there is a violation of subsection (a) of this section in the unlawful importation of certain rotatable display devices, or components thereof, into the United States, or in their sale, by reason of the alleged infringement by such rotatable display devices of—

- (a) the claim of U.S. Letters Patent 3,218,743,
- (b) the claim of U.S. Letters Patent 3,791,059,
- (c) U.S. Trademark Registration No. 838,394, and
- (d) the common law trademark Roto-Photo,

the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Roto-Photo Co., Inc.
5620 North Western Avenue
Chicago, Ill. 60659

Aaron H. Shneider
9221 Drake Avenue
Skokie, Ill. 60061

(b) The respondents are the following parties upon whom the complaint is to be served:

Crown Craft Products, Inc.
251 West 19th Street
New York, N.Y. 10011

Etna Products Co.
53 West 23rd Street
New York, N.Y. 10010

Dan Dee Imports
106 Harbor Drive
Jersey City, N.J. 07305

American Home Toy
Parties, Inc.
20 Craig Road
Acton, Mass. 01720

American Consumer, Inc.
Caroline Road
Philadelphia, Pa. 19176

Chadwick-Miller, Inc.
300 Turnpike Street
Canton, Mass. 02021

Ben Franklin Stores
P.O. Box 5938
Chicago, Ill. 60680

Regent Export Co., Ltd.
TST P.O. Box 98067
704 Kowloon Centre
29-39 Ashley Road, Tsim-
shatsui
Kowloon, Hong Kong

(c) Charles F. Schill, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, is hereby named Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Chief Administrative Law Judge Donald K. Duvall, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's rules of practice and procedure, as amended (19 CFR 210.21). Pursuant to section 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extension of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for the confidential information contained therein, is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and in the Commission's New York City office, 6 World Trade Center, New York, NY 10048.

By order of the Commission.

Issued: November 13, 1979.

KENNETH R. MASON,
Secretary.

In the Matter of } Investigation No. 337-TA-
PUMP, TOP-INSULATED CONTAINERS } 59

Commission determination and order

The U.S. International Trade Commission conducted an investigation under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), of alleged unfair methods of competition and unfair acts in the unauthorized importation into or sale in the United States of pump-top, insulated containers¹ by reason of the infringement of U.S. Letters Patent No. 4,113,147, the unlawful copying of trade dress, and the failure to indicate the country of origin.² On

¹ Pump-top, insulated containers are vacuum bottles fitted with a pumping mechanism which allows the user to pump the liquid from inside the container without opening it. This helps to keep the liquid at the desired temperature and to eliminate most spills. These containers are known as "air pots" within the industry.

² This last allegation was withdrawn by Aladdin.

November 1, 1979, the Commission unanimously determined that there was a violation of section 337 and ordered that pump-top, insulated containers which infringe U.S. Letters Patent No. 4,113,147 be excluded from entry into the United States for the term of that patent (until September 25, 1995) unless the importation is licensed by the patent owner.

The purpose of the Commission determination and order which follow is to provide for the final disposition of the Commission's investigation of pump-top, insulated containers.

DETERMINATION

Having reviewed the record compiled in this investigation, the Commission on November 1, 1979, determined—

1. That with respect to Apollo Ltd., a respondent in this investigation, there is a violation of section 337 of the Tariff Act of 1930, as amended, in the importation into and sale in the United States of pump-top, insulated containers by the owner, importer, consignee, or agent of either, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States;
2. That the appropriate remedy for such violation is to direct that pump-top, insulated containers manufactured abroad which infringe U.S. Letters Patent No. 4,113,147 be excluded from entry into the United States for the term of said patent, except where such importation is licensed by the owner of said patent;
3. That, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers, such pump-top, insulated containers should be excluded from entry; and
4. That the bond provided for in subsection (g)(3) of section 337 of the Tariff Act of 1930, as amended, be in the amount of 63 percent ad valorem (ad valorem to be determined in accordance with section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a)) of the imported article.

ORDER

Accordingly, it is hereby ordered—

1. That pump-top, insulated containers which infringe U.S. Letters Patent No. 4,113,147 are excluded from entry into the United States for the term of said patent, except where such importation is licensed by the owner of said patent;
2. That pump-top, insulated containers ordered to be excluded from entry are entitled to entry into the United States under bond in the amount of 63 percent ad valorem (ad valorem to be determined in

accordance with section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a)) from the day after this order is received by the President pursuant to section 337(g) of the Tariff Act of 1930, as amended, until such time as the President notifies the Commission that he approves or disapproves this action. but, in any event, not later than 60 days after such date of receipt;

3. That this order be published in the Federal Register and that this order and the opinion in support thereof be served upon each party of record in this investigation and upon the U.S. Department of Health, Education, and Welfare, the U.S. Department of Justice, the Federal Trade Commission, and the Secretary of the Treasury; and

4. That the Commission may amend this order at any time.

By the order of the Commission.

Issued: November 9, 1979.

KENNETH R. MASON,
Secretary.

(AA1921-212)

SPUN ACRYLIC YARN FROM JAPAN

Notice of Investigation and Hearing

Having received advice from the Department of the Treasury on October 22, 1979, that spun acrylic yarn from Japan is being, or is likely to be, sold at less than fair value, the U.S. International Trade Commission, on November 19, 1979, instituted investigation No. AA1921-212 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. For purposes of the Treasury Department's determination, "spun acrylic yarn" means spun yarn of acrylic classified under item 310.50 of the Tariff Schedules of the United States.

Conduct of the investigation under the Trade Agreements Act of 1979.—Under the Antidumping Act, 1921, the Commission is required to notify the Treasury Department of its determination in this investigation not later than January 22, 1980. However, under section 102 of the Trade Agreements Act of 1979 (Public Law 96-39, 93 Stat. 144, July 26, 1979), the Commission would be required to terminate this investigation on January 1, 1980, and initiate an investigation under subtitle B of title VII of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979, if the conditions set forth in sections 2 and 107 of the Trade Agreements Act are fulfilled by January 1, 1980. In

the event that the Trade Agreements Act becomes effective on January 1, 1980, this present investigation will be terminated and a new investigation will be instituted which will be conducted under the provisions of sections 101 and 102 of the Trade Agreements Act. That act requires this new investigation to be completed within 75 days after January 1, 1980. On the assumption that the new law will become effective, the procedures described below will be followed in the present investigation.

Hearing.—A public hearing in connection with the investigation will be held on Tuesday, January 22, 1980, in the Commission's hearing room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, beginning at 10 a.m., e.s.t. Requests to appear at the public hearing should be filed in writing with the Secretary to the Commission not later than close of business (5:15 p.m., e.s.t.), Tuesday, January 15, 1980. (If it appears that the dumping provisions of the Trade Agreements Act will not be effective on January 1, 1980, a notice rescheduling the hearing (and related prehearing report and statements) for an earlier date will be issued.)

Prehearing statements.—The Commission will prepare and place on the record by January 8, 1980, a staff report containing preliminary findings of fact. Parties to the investigation will submit to the Commission a prehearing statement by January 18, 1980. The content of such statement should include the following:

- (a) exceptions, if any, to the preliminary findings of fact contained in the staff report;
- (b) any additional or proposed alternative findings of fact;
- (c) proposed conclusions of law;
- (d) any other information and arguments which a party believes relevant to the Commission's determination in this investigation; and
- (e) a proposed determination for adoption by the Commission.

Collection and confidentiality of information.—Requests for confidential treatment of information submitted to the Commission should be directed to the attention of the Secretary. Requests must conform with the requirements of section 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6).

Information submitted to or gathered by the Commission in conjunction with this proceeding under section 201(a) of the Anti-dumping Act will be placed in the record of the proceeding instituted under title VII of the Tariff Act of 1930, as added by the Trade Agreements Act, if and when that law becomes effective. That information will be subject to the new antidumping provisions regarding access to information set forth in title VII. Those provisions relate to the collection and retention of information by the Commission and the main-

tenance of confidentiality or the disclosure of information. The provisions of section 777 of title VII will require the following:

- (a) a record of all ex parte meetings between interested parties or persons providing factual information in connection with an investigation and the Commissioners, their staffs, or any person charged with making a final recommendation in an investigation;
- (b) disclosure of nonconfidential information or nonconfidential summaries of confidential information which is not in a form that can be associated with or used to identify the operations of a particular person;
- (c) preventing disclosure of confidential information unless the party submitting the information consents to the disclosure; and
- (d) limited disclosure of certain confidential information under protective order or by an order of the U.S. Customs Court.

Section 516A of the Tariff Act of 1930, as amended by the Trade Agreements Act, will require that all information in the record before the Commission in the title VII investigation, whether confidential or nonconfidential in nature, become part of the record before the U.S. Customs Court in any action under section 516A regarding Commission determination. Section 771 provides definitions applicable to title VII.

The Commission is prescribing these procedures pursuant to section 335 of the Tariff Act of 1930, as amended (19 U.S.C. 1335), which authorizes the Commission to adopt such reasonable procedures as are necessary to carry out its functions and duties.

By order of the Commission.

Issued: November 21, 1979.

KENNETH R. MASON,
Secretary.

(225-1)

COMPETITIVE STATUS OF CERTAIN BENZENOID CHEMICAL IMPORTS
FROM SWITZERLAND AND THE EUROPEAN COMMUNITY

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the U.S. International Trade Commission has made its preliminary determinations with respect to lists of benzenoid chemicals and products notified to the United States by Switzerland and the European Community for the purpose of reviewing the U.S. Customs treatment accorded each chemical or product during 1976, 1977, and 1978, pursuant to investigation No. 225-1, initiated September 18, 1979 (44 F.R. 55442, September 26, 1979).

The annex to this notice lists the chemicals and products which the Commission has preliminarily determined were not valued for Customs purposes on the basis of American selling price upon entry into the United States during a period determined by it to be representative, and for which a more appropriate and representative rate of duty exists in section 223 of the Trade Agreements Act of 1979 than the rate of duty that would apply but for section 225 of that act.

WRITTEN SUBMISSIONS: Interested parties are invited to comment on all aspects of the Commission's preliminary determinations including the Commission's methodology in eliminating articles from further consideration, the representativeness of the representative periods selected by the Commission, and the appropriateness of the "more appropriate and representative" rates of duty chosen by the Commission. Written comments should be submitted by November 27, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Cappucilli, Office of Industries (202-523-0490) or Mr. Holm Kappler, Office of Nomenclature, Valuation, and Related Activities (202-523-0362), U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979 contains a new tariff nomenclature for benzenoid chemicals with rates of duty adjusted to reflect the adoption by the United States of a revised system of Customs valuation based principally upon transaction value. Under section 225 of the Trade Agreements Act of 1979 the President is authorized to proclaim a modification of the article descriptions in subparts B and C of part 1 of schedule 4 of the Tariff Schedules of the United States in order to transfer articles within those provisions. The President may not make any such modification unless the Commission determines that—

- (1) the chemical or product was not valued for customs purposes on the basis of American selling price upon entry into the United States during a period determined by the Commission to be representative; and
- (2) a rate of duty provided for in such subparts, other than the rate of duty that would apply but for this section, is more appropriate and representative for such chemical or product.

The Commission has reviewed lists of certain benzenoid chemicals notified to the United States by Switzerland and the European Community with regard to the U.S. Customs treatment accorded each chemical or product during 1976, 1977, and 1978.

For the 428 chemicals and products in the combined lists, the Commission tabulated the available data for each Customs entry of each chemical or product, including its Customs valuation treatment.

Approximately 299 of those chemicals and products have been tentatively eliminated because (a) it was impossible to locate Customs entry data from the information supplied, (b) the chemicals were valued on the basis of American selling price by Customs during the representative period determined by the Commission, (c) the supplied name or description of the product is inappropriate or insufficient for Customs nomenclature and classification purposes, (d) no other classification provision is applicable, or (e) no more appropriate and representative rate of duty exists in section 223 of the Trade Agreements Act of 1979 than the rate of duty that would apply but for section 225 of that act.

There are 129 chemicals and products which the Commission has identified as not having been valued on the basis of American selling price and for which a more appropriate and representative rate of duty exists in section 223 of the Trade Agreements Act of 1979 than the rate of duty that would apply but for section 225 of that act. These chemicals and products are listed in the annex to this notice and are eligible articles for duty modification to be proclaimed by the President pursuant to the authority in section 225 of the Trade Agreements Act of 1979.

The "representative period" shown for each item is the most recent 12-month period during which imports are known to have entered the United States from the European Community and Switzerland.

By order of the Commission.

Issued November 9, 1979.

KENNETH R. MASON,
Secretary.

ANNEX

Chemicals or products which were not valued on the basis of American selling price and for which a more appropriate and representative rate of duty exists in section 223 of the Trade Agreements Act of 1979

Chemical name/product	Representative period (month/year)	TSUS item No. and col. 1 rate of duty in sec. 223			
		Existing rate		More appropriate rate	
		TSUS item	Rate (percent)	TSUS item	Rate (percent)
Acid Black 177.....	November 1977 to November 1978.	409.66	30.7.....	409.62	23.0
Acid Black 188.....	October 1977 to October 1978.	409.66	30.7.....	409.62	23.0
Acid Black 199.....	February 1976 to February 1977.	409.66	30.7.....	409.62	23.0
Acid Blue 1.....	June 1977 to June 1978....	409.66	30.7.....	409.62	23.0
Acid Blue 175.....	April 1977 to April 1978....	409.66	30.7.....	409.62	23.0
Acid Blue 252.....	May 1977 to May 1978....	409.66	30.7.....	409.62	23.0

ANNEX—Continued

Chemicals or products which were not valued on the basis of American selling price and for which a more appropriate and representative rate of duty exists in section 223 of the Trade Agreements Act of 1979

Chemical name/product	Representative period (month/year)	TSUS item No. and col. 1 rate of duty in sec. 223			
		Existing rate		More appropriate rate	
		TSUS item	Rate (percent)	TSUS item	Rate (percent)
Acid Blue 284.....	November 1977 to November 1978.	409.66	30.7.....	409.62	23.0
Acid Blue 318.....	January 1977 to January 1979.	409.66	30.7.....	409.62	23.0
Acid Brown 85.....	June 1977 to June 1978.....	409.66	30.7.....	409.62	23.0
Acid Brown 357.....	December 1977 to December 1978.	409.66	30.7.....	409.62	23.0
Acid Brown 384.....	August 1977 to August 1978.	409.66	30.7.....	409.62	23.0
Acid Green 89.....	October 1977 to October 1978.	409.66	30.7.....	409.62	23.0
Acid Orange 107.....	June 1977 to June 1978.....	409.66	30.7.....	409.62	23.0
Acid Orange 144.....	March 1977 to March 1978.....	409.66	30.7.....	409.62	23.0
Acid Red 183.....	August 1977 to August 1978.	409.66	30.7.....	409.62	23.0
Acid Red 215.....	August 1976 to August 1977.	409.66	30.7.....	409.62	23.9
Acid Red 330.....	do.....	409.66	30.7.....	409.62	23.0
Acid Red 359.....	April 1977 to April 1978.....	409.66	30.7.....	409.62	23.0
Acid Red 360.....	August 1977 to August 1978.	409.66	30.7.....	409.62	23.0
Acid Yellow 70.....	November 1977 to November 1978.	409.66	30.7.....	409.62	23.0
Acid Yellow 199.....	January 1978 to January 1979.	409.66	30.7.....	409.62	23.0
Acid Yellow 221.....	October 1977 to October 1978.	409.66	30.7.....	409.62	23.0
Basic Blue 70.....	February 1977 to February 1978.	409.74	30.9.....	409.70	22.6
Basic Orange 48.....	January 1977 to January 1978.	409.74	30.9.....	409.70	22.6
Basic Red 22.....	May 1977 to May 1978.....	409.74	30.9.....	409.70	22.6
Basic Red 75.....	August 1976 to August 1977.	409.74	30.9.....	409.70	22.6
Direct Black 114.....	November 1977 to November 1978.	409.82	28.6.....	409.78	23.8
Direct Red 221.....	do.....	409.82	28.6.....	409.78	23.8
Direct Yellow 27.....	April 1977 to April 1978.....	409.82	28.6.....	409.78	23.8
Disperse Blue 35.....	December 1977 to December 1978.	409.90	27.8.....	409.86	22.5
Disperse Blue 73.....	November 1977 to November 1978.	409.90	27.8.....	409.86	22.5
Disperse Bule 126.....	August 1977 to August 1978.	409.90	27.8.....	409.96	22.5
Disperse Blue 148.....	September 1977 to September 1978.	409.90	27.8.....	409.86	22.5
Disperse Blue 289.....	May 1977 to May 1978.....	409.90	27.8.....	409.86	22.5
Disperse Brown 1.....	July 1976 to July 1977.....	409.90	27.8.....	409.86	22.5
Disperse Orange 54.....	August 1977 to August 1978.	409.90	27.8.....	409.86	22.5

ANNEX—Continued

Chemicals or products which were not valued on the basis of American selling price and for which a more appropriate and representative rate of duty exists in section 223 of the Trade Agreements Act of 1979

Chemical name/product	Representative period (month/year)	TSUS item No. and col. 1 rate of duty in sec. 223			
		Existing rate		More appropriate rate	
		TSUS item	Rate (percent)	TSUS item	Rate (percent)
Disperse Orange 60.....	January 1977 to January 1978.	409.90	27.8.....	409.86	22.5
Disperse Orange 139.....	October 1977 to October 1978.	409.90	27.8.....	409.86	22.5
Disperse Red 46.....	do.....	409.90	27.8.....	409.86	22.5
Disperse Red 160.....	August 1976 to August 1977.	409.90	27.8.....	409.86	22.5
Disperse Red 277.....	August 1977 to August 1978.	409.90	27.8.....	409.86	22.5
Disperse Red 288.....	June 1977 to June 1978.....	409.90	27.8.....	409.86	22.5
Disperse Red 303.....	October 1977 to October 1978.	409.90	27.8.....	409.86	22.5
Disperse Violet 33.....	December 1977 to December 1978.	409.90	27.8.....	409.86	22.5
Disperse Violet 35.....	November 1977 to November 1978.	409.90	27.8.....	409.86	22.5
Disperse Violet 48.....	October 1977 to October 1978.	409.90	27.8.....	409.86	22.5
Disperse Violet 57.....	November 1977 to November 1978.	409.90	27.8.....	409.86	22.5
Disperse Yellow 85.....	do.....	409.90	27.8.....	409.86	22.5
Disperse Yellow 182.....	July 1977 to July 1978.....	409.90	27.8.....	409.86	22.5
Disperse Yellow 183.....	do.....	409.90	27.8.....	409.86	22.5
Disperse Yellow 202.....	November 1977 to November 1978.	409.90	27.8.....	409.86	22.5
Pigment Brown 32.....	May 1977 to May 1978.....	410.32	31.3	410.28	20.4
Pigment Red 68.....	October 1976 to October 1977.	410.32	31.3	410.28	20.4
Pigment Red 216.....	July 1977 to July 1978.....	410.32	31.3	410.28	20.4
Pigment Violet 32.....	January 1977 to January 1978.	410.32	31.3	410.28	20.4
Pigment Yellow 16.....	November 1977 to November 1978.	410.32	31.3	410.28	20.4
Pigment Yellow 24.....	December 1977 to December 1978.	410.32	31.3	410.28	20.4
Pigment Yellow 62.1.....	do.....	410.32	31.3	410.28	20.4
Pigment Yellow 93.....	do.....	410.32	31.3	410.28	20.4
Pigment Yellow 95.....	October 1977 to October 1978.	410.32	31.3	410.28	20.4
Pigment Yellow 108.....	March 1977 to March 1978.....	410.32	31.3	410.28	20.4
Pigment Yellow 138.....	November 1977 to November 1978.	410.32	31.3	410.28	20.4
Reactive Blue 19.....	December 1977 to December 1978.	410.08	27.8	410.04	20.5
Reactive Blue 21.....	do.....	410.08	27.8	410.04	20.5
Reactive Blue 27.....	October 1977 to October 1978.	410.08	27.8	410.04	20.5
Reactive Blue 63.....	November 1977 to November 1978.	410.08	27.8	410.04	20.5

ANNEX—Continued

Chemicals or products which were not valued on the basis of American selling price and for which a more appropriate and representative rate of duty exists in section 223 of the Trade Agreements Act of 1979

Chemical name/product	Representative period (month/year)	TSUS item No. and col. 1 rate of duty in sec. 223			
		Existing rate		More appropriate rate	
		TSUS item	Rate (percent)	TSUS item	Rate (percent)
Reactive Blue 73.....	do.....	410.08	27.8	410.04	20.5
Reactive Blue 99.....	March 1977 to March 1978.....	410.08	27.8	410.04	20.5
Reactive Blue 137.....	December 1977 to December 1978.....	410.08	27.8	410.04	20.5
Reactive Blue 139.....	March 1977 to March 1978.....	410.08	27.8	410.04	20.5
Reactive Blue 162.....	November 1977 to November 1978.....	410.08	27.8	410.04	20.5
Reactive Blue 163.....	March 1977 to March 1978.....	410.08	27.8	410.04	20.5
Reactive Brown 7.....	December 1977 to December 1978.....	410.08	27.8	410.04	20.5
Reactive Brown 16.....	January 1977 to January 1978.....	410.08	27.8	410.04	20.5
Reactive Brown 26.....	March 1977 to March 1978.....	410.08	27.8	410.04	20.5
Reactive Green 19.....	January 1977 to January 1978.....	410.08	27.8	410.04	20.5
Reactive Orange 41.....	February 1977 to February 1978.....	410.08	27.8	410.04	20.5
Reactive Orange 68.....	March 1976 to March 1977.....	410.08	27.8	410.04	20.5
Reactive Red 24.....	January 1976 to January 1977.....	410.08	27.8	410.04	20.5
Reactive Red 32.....	December 1977 to December 1978.....	410.08	27.8	410.04	20.5
Reactive Red 85.....	September 1976 to September 1977.....	410.08	27.8	410.04	20.5
Reactive Red 118.....	do.....	410.08	27.8	410.04	20.5
Reactive Red 141.....	December 1977 to December 1978.....	410.08	27.8	410.04	20.5
Reactive Red 179.....	October 1977 to October 1978.....	410.08	27.8	410.04	20.5
Reactive Violet 6.....	December 1977 to December 1978.....	410.08	27.8	410.04	20.5
Reactive Yellow 2.....	September 1977 to September 1978.....	410.08	27.8	410.04	20.5
Reactive Yellow 5.....	August 1977 to August 1978.....	410.08	27.8	410.04	20.5
Reactive Yellow 37.....	March 1977 to March 1978.....	410.08	27.8	410.04	20.5
Reactive Yellow 39.....	April 1977 to April 1978.....	410.08	27.8	410.04	20.5
Solvent Black 29.....	August 1977 to August 1978.....	410.00	28.0	409.96	19.9
Solvent Black 35.....	March 1977 to March 1978.....	410.00	28.0	409.96	19.9
Solvent Blue 45.....	do.....	410.00	28.0	409.96	19.9
Solvent Brown 43.....	December 1977 to December 1978.....	410.00	28.0	409.96	19.9
Solvent Orange 59.....	October 1977 to October 1978.....	410.00	28.0	409.96	19.9
Solvent Orange 62.....	January 1977 to January 1978.....	410.00	28.0	409.96	19.9
Solvent Red 7.....	December 1977 to December 1978.....	410.00	28.0	409.96	19.9

ANNEX—Continued

Chemicals or products which were not valued on the basis of American selling price and for which a more appropriate and representative rate of duty exists in section 223 of the Trade Agreements Act of 1979

Chemical name/product	Representative period (month/year)	TSUS item No. and col. 1 rate of duty in sec. 223			
		Existing rate		More appropriate rate	
		TSUS item	Rate (percent)	TSUS item	Rate (percent)
Solvent Red 127.....	do.....	410.00	28.0	409.96	19.9
Solvent Yellow 30.....	August 1977 to August 1978.	410.00	28.0	409.96	19.9
Vat Blue 5.....	February 1977 to February 1978.	410.16	32.9	410.12	20.9
Vat Blue 16.....	November 1977 to November 1978.	410.16	32.9	410.12	20.9
Vat Brown 50.....	January 1977 to January 1 1978.	410.16	32.9	410.12	20.9
Vat Red 10.....	November 1976 to November 1977.	410.16	32.9	410.12	20.9
p-Acetoacetotoluidide.....	January 1977 to January 1978.	405.32	1.7¢/lb +18.1%	405.28	1.7¢/lb +12.4%
1-Amino-4-bromo-2-methylanthraquinone.....	December 1977 to December 1978.	405.08	1.7¢/lb +18.1%	404.92	1.7¢/lb +12.2%
3-Amino-4-chlorobenzamide.....	May 1976 to May 1977.....	405.32	1.7¢/lb +18.1%	405.28	1.7¢/lb +12.4%
2-Amino-6-chloro-4-nitrophenol.....	August 1976 to August 1977.	405.08	1.7¢/lb +15.6%	404.92	1.7¢/lb +12.2%
2-(p-Aminophenyl)-6-methylbenzothiazole (Dehydrothio-p-toluidine).	November 1977 to November 1978.	406.40	1.7¢/lb +16.2%	406.36	1.7¢/lb +12.4%
Amino-J-pyrazolone.....	August 1977 to August 1978.	406.40	...do.....	406.36	Do.
Benzoin-tetrahydropyranyl ether.....	September 1977 to September 1978.	406.40	...do.....	406.36	Do.
1,1' Binaphthyl-8,8'-dicarboxylic acid.	December 1977 to December 1978.	404.36	1.7¢/lb +22.7%	404.32	1.7¢/lb +11.6%
Bismuth tribromophenate.....	April 1977 to April 1978.....	411.94	1.7¢/lb +18.7%	411.90	1.7¢/lb +12.8%
3-Chloro-o-toluidine.....	July 1977 to July 1978.....	404.88	1.7¢/lb +18.8%	404.84	1.7¢/lb +12.4%
4-Chloro-a,a,a, trifluoro-o-toluidine.	December 1977 to December 1978.	404.88	...do.....	404.84	Do.
Cinnamoyl chloride.....	July 1976 to July 1977.....	404.28	1.7¢/lb +17.9%	404.24	1.7¢/lb +12.6%
Clofibrate.....	December 1977 to December 1978.	412.10	1.7¢/lb +18.0%	412.06	1.7¢/lb +13.1%
2-Cyano-4-nitroaniline.....	August 1976 to August 1977.	404.88	1.7¢/lb +18.8%	404.84	1.7¢/lb +12.4%
N,N-Diethylmethanilic acid, sodium salt.	February 1977 to February 1978.	404.88	...do.....	404.84	Do.
2-Ethylamino-5-sulfobenzoic acid.....	October 1977 to October 1978.	406.40	1.7¢/lb +16.2%	406.36	1.7¢/lb +12.4%
N-Ethyl-o-toluidine.....	September 1977 to September 1978.	404.88	1.7¢/lb +18.8%	404.84	1.7¢/lb +12.4%
Formyl phenylacetic acid, methyl ester.	June 1976 to June 1977.....	404.46	1.7¢/lb +17.9%	404.40	1.7¢/lb +12.5%

(TA-131(b)-3)

LIST OF ARTICLES WHICH MAY BE CONSIDERED FOR
INTERNATIONAL TRADE NEGOTIATIONS

Notice of Investigation and Hearing

The Special Representative for Trade Negotiations (STR), acting pursuant to the authority delegated to him by the President (E.O. 11846, as amended by E.O. 11947) and in conformity with section 131 of the Trade Act of 1974 (19 U.S.C. 2151), gave notice on October 26, 1979 (44 F.R. 61715) of articles that may be considered in international trade negotiations for modification or continuance of U.S. duties, or for additional duties.

The STR has requested the Commission to furnish its advice pursuant to section 131 of the Trade Act as to the probable economic effect of increases in existing rates of duty for the articles on the list on industries producing like or directly competitive articles and on consumers.

The list, annotated with the current rates of duty for each listed article and the maximum rates of duty which may be imposed on such articles under authority of section 101(c) of the Trade Act, is published as an annex to this notice. The current rates of duty shown in rate columns numbered 1 and 2 are the same as the rates in effect as of January 1, 1975.

Investigations.—In accordance with the request of the STR and the provisions of sections 101 and 131(b) of the Trade Act, the Commission, on November 6, 1979, instituted investigation TA-131(b)-3 for the purposes of obtaining, to the extent practicable, information of the kind described in section 131(d) of the Trade Act for use in connection with the preparation of the advice requested by the STR.

Hearing.—A public hearing in connection with the investigation will be held in the Commission hearing room, 701 E Street NW., Washington, D.C. 20436, beginning at 10 a.m., e.s.t., on Monday, November 19, 1979. All interested persons will be given an opportunity to be present, to produce evidence, and to be heard at the hearing. Requests to appear at the public hearing should be addressed to the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, and should be received not later than noon of the fifth calendar day preceding the hearing.

Written submissions.—In lieu of or in addition to appearing at the public hearing, interested persons may submit written statements. Any business information which a submitter desires the Commission to treat as confidential shall be submitted on separate sheets, each clearly marked at the top "Confidential Business Data." Confidential

submissions must conform with the requirements of section 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than November 21, 1979. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Report.—At the completion of this investigation, the Commission will transmit its report to the STR. The Commission expects to transmit to the STR by December 19, 1979. The report will not be made public by the Commission.

By order of the Commission:

Issued: November 7, 1979.

KENNETH R. MASON,
Secretary.

Attachment.

ANNEX

GSP	TSUS item No. ¹	Articles	Rates of duty		
			Col. 1	Col. 2	Maximum increase permissible ²
A ³	135.90	Vegetables, fresh, chilled, or frozen (but not reduced in size nor otherwise prepared or preserved): Cucumbers, if entered during the period from December 1 in any year to the last day of the following February, inclusive.	2.2¢ per lb.	3¢ per lb.	4.5¢ per lb., or 2.2¢ per lb. + 20% ad val., whichever is higher.
	136.20	Eggplant, if entered during the period from April 1 to November 30, inclusive, in any year.	1.5¢ per lb.	1.5¢ per lb.	2.25¢ per lb., or 1.5¢ per lb. + 20% ad val., whichever is higher.
	137.10	Peppers.....	2.5¢ per lb.	2.5¢ per lb.	3.75¢ per lb., or 2.5¢ per lb. + 20% ad val., whichever is higher.
	137.50	Squash.....	1.1¢ per lb.	2¢ per lb.	3¢ per lb., or 1.1¢ per lb. + 20% ad val., whichever is higher.
	137.60	Tomatoes: If entered during the period from March 1 to July 14, inclusive, or the period from September 1 to November 14, inclusive, in any year.	2.1¢ per lb.	3¢ per lb.	4.5¢ per lb. or 2.1¢ per lb. + 20% ad val., whichever is higher.

GSP	TSUS item No. ¹	Articles	Rates of duty		
			Col. 1	Col. 2	Maximum increase permissible ²
	137.63	If entered during the period from November 15, in any year, to the last day of the following February, inclusive.	1.5¢ per lb.	3¢ per lb.	4.5¢ per lb. or 1.5¢ per lb. + 20% ad val., whichever is higher.

¹ Tariff Schedules of the United States. The Tariff Schedules of the United States Annotated (1978) is for sale by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402; it is also available for inspection without charge at any field office of the U.S. Customs Service or the Department of Commerce and at depository libraries.

² Sec. 101(c) provides as follows: (c) No proclamation shall be made pursuant to subsection (a) (2) increasing any rate of duty to, or imposing a rate above, the higher of the following: (1) the rate which is 50 percent above the rate set forth in rate column numbered 2 of the Tariff Schedules of the United States as in effect on Jan. 1, 1975, or (2) the rate which is 20 percent ad valorem above the rate existing on Jan. 1, 1975.

Current rates of duty are shown in rate columns numbered 1 and 2. Such rates are also the same as the rates in effect as of Jan. 1, 1975.

³ Cucumbers, the product of Mexico, provided for under TSUS item 135.90, are not entitled to duty-free treatment to developing countries under the generalized system of preferences.

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